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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013-0078, Sequence 6]

**Federal Acquisition Regulation; Federal Acquisition Circular
2005-70; Small Entity Compliance Guide**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005-70, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005-70, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005-70 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

Rule Listed in FAC 2005-70

<u>Item</u>	<u>Subject</u>	<u>FAR Case</u>	<u>Analyst</u>
*I	Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (Interim)	2013-015	Corrigan
*II	Allowability of Legal Costs for Whistleblower Proceedings (Interim)	2013-017	Chambers

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005-70 amends the FAR as specified below:

Item I—Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (FAR Case 2013-015)

This interim rule amends the FAR to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at subpart 3.9. In accordance with FAR 1.108(d)(3), contracting officers are encouraged to include the changes in these rules in major modifications to contracts and orders awarded prior to the

effective date of this interim rule. The pilot program is mandated by section 828, entitled "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections," of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013). This rule implements section 828 by amending FAR 3.900, Scope of subpart, to make FAR 3.901 through 3.906 inapplicable to DoD, NASA, and the Coast Guard and to prohibit the use of these sections for new awards by all other agencies subject to the FAR (title 41 agencies) through January 1, 2017. This rule creates a new FAR section 3.908 to be used by title 41 agencies through January 1, 2017. Other exceptions: FAR 3.907, which addresses whistleblower protections under the American Recovery and Reinvestment Act of 2009, is unaffected by this rule. This rule does not provide any right not otherwise provided by law to disclose classified information, nor does it apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)(4)). In addition, the interim rule applies to actions over the simplified acquisition threshold.

Item II--Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013-017)

This interim rule amends the FAR by revising the cost principle at FAR 31.205-47 to implement sections 827(g) and

828(d) of the NDAA for FY 2013 (Pub. L. 112-239). There are two new whistleblower programs for contractor and subcontractor employees, at 10 U.S.C. 2409 and 41 U.S.C. 4712. The latter program is a pilot program, being addressed in FAR Case 2013-015, amending FAR subpart 3.9. The cost principle addresses the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower protection proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower statute. Because most contracts awarded to small businesses use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, thus limiting their exposure to the cost principles, the impact of this interim rule on small businesses will be minimal.

Dated: September 24, 2013.

William Clark,
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